piles delivered by the seller, though they were not merchantable, because he thought the defects were occasioned by delay in inspection, and it was the buyer's policy not to require the seller to stand the loss caused by such delay, raised a question for the jury whether the partial acceptance was an implied agreement to accept all, so that it was error to charge that, if part of the goods were accepted, the buyer could not reject the others, which were of the same quality, because they were not merchantable.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 47.]

Error to Circuit Court, Charles City County.

Action by J. W. Avery against P. J. Rennolds, doing business under the firm name and style of J. A. Rennolds & Bro. Judgment for plaintiff, and defendant brings error. Reversed, and new trial awarded.

No attorneys mentioned in book.

ATLANTIC COAST LINE R. CO. *v.* A. M. WALKUP Co., Inc., et al.

March 16, 1922.

[111 S. E. 125.]

1. Railroads (§ 17*)—Supervising Engineer's Acts Held Binding on Companies Erecting Union Station.—Where two railroads let a contract for the construction of a union station, the work to be done under the superintendence of an engineer of one of the railroads, and each company to pay half of the cost, the action of the engineer in stopping work upon the station because of a desire to change the location and in thereafter awarding to the contractor an additional sum for the increased cost of the work due to the delay was the act of an agent of both railroad companies, so that each must pay its share of the extra compensation.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 555.]

2. Contracts (§ 301*)—Contractor May Recover for Loss from Unreasonable Delay Caused by Owner.—A building contractor may recover damages sustained by him for loss resulting from unreasonable delay on the part of the owner in permitting him to perform his contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 421.]

3. Railroads (§ 17*)—Contract for Erection of Union Station Held Not within Agent's Authority.—Knowledge by a contractor for a union railroad station, to be paid for jointly by two railroads, that the removal of station to another site was a new contract, placed upon him the duty to ascertain the authority of the agent who

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

authorized the removal to bind the company by which he was not employed, so that the contractor cannot recover from the latter company any portion of the cost of removal which it had expressly refused to pay for.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 250.]

4. Appeal and Error (§ 1175 (1)*)—Evidence Held to Authorize New Judgment Disposing of the Case.—Where the judgment below authorized recovery by a contractor for the removal of a union railroad station from a railroad company which had refused to pay any portion of such cost except a sum which it had previously paid to the other company using the station, and both companies were before the court on writ of error, and there was no probability that on another trial different evidence might be introduced, the court can dispose of the case under Code 1919, § 6365, by reversing the judgment for the improper amount against the company, which did not authorize the expenditure and rendering judgment for that amount against the other company.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 664.]

Error to Hustings Court of Petersburg.

Action by the A. M. Walkup Company, Inc., against the Atlantic Coast Line Railroad Company and the Seaboard Air Line Railway Company. Judgment for the plaintiff against the defendant Atlantic Coast Line Railroad Company, and for the defendant Seaboard Air Line Railway Company, and the Atlantic Coast Line Railroad Company brings error. Motion of the Seaboard Air Line Railway Company to be dismissed as a party to the writ of error denied, and judgment reversed in part and affirmed in part so as to require each defendant to pay a portion of the amount due plaintiff.

Wm. B. McIlwaine, of Chicago, Ill., and *Bernard Mann,* of Petersburg, for plaintiff in error.

Munford, Hunton, Williams & Anderson, and *D. C. O'Flaherty,* all of Richmond, for defendant in error.

MOORE *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 127.]

1. Intoxicating Liquors (§ 236 (5)*)—Evidence of Finding Liquor Held to Sustain Conviction.—Unexplained and uncontradicted evidence that liquor was found on defendant's premises held to sustain conviction for a violation of the Prohibition Law, under section 28.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 35.]

2. Intoxicating Liquors (§ 236 (5)*)—Finding of Liquor on Owner's Premises Prima Facie Evidence of Violation of Prohibition Law,

---

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.